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IN THE

Supreme Court of the United States

OCTOBER TERM, 1946

Nos. 470 and 472

ILLINOIS COMMERCE COMMISSION, ET AL., ETC.,
Petitioners,

vs.

GREAT LAKES ELEVATOR CORPORATION, ET AL.,
Respondents.

BRIEF OF RESPONDENTS IN OPPOSITION TO PETITIONS FOR WRITS OF CERTIORARI.

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Respondents, Great Lakes Elevator Corporation, Santa Fe Elevator Corporation, Norris Grain Company, Stratton Grain Company, Continental Grain Company, Rosenbaum Bros. and Cargill, Incorporated file this brief in opposition to separate petitions for certiorari filed in cases bearing numbers 470 and 472.

I.

Opinion.

The opinion of the United States Circuit Court of Appeals for the Seventh Circuit is reported in 156 F. 2nd 33 (June 7, 1946). (R. 106.)

II.

The Question Presented.

The record clearly shows that the respondents' federally licensed warehouses are an integral part of the vast flow of grain in and out of the Chicago market. (R. 59-76.) The power of Congress to exercise exclusive control over respondents is conceded.

The basic issue here is whether Congress has exercised such power by enactment of the United States Warehouse Act and amendments thereto so as to preclude the State of Illinois from regulating such warehouses with respect to the matters sought to be invoked in the instant case.

Respondents' position is that the scope and express provisions of the United States Warehouse Act, as amended, clearly indicate the intent of Congress to pre-empt and occupy the field of regulation of federally licensed warehouses so as to preclude such state regulation. We are dealing with actual invasion of the federal domain and not merely a hypothetical intrusion.

III.

Statement of the Case.

The present litigation arose out of a complaint filed by Daniel F. Rice and Company, a partnership, before the Illinois Commerce Commission on July 28, 1944, entitled "*Daniel F. Rice and Company* v. *Chicago Grain Corporation, et al.*" (R. 16-24.) That complaint sought to invoke the Illinois Commerce Commission's regulatory powers over the Board of Trade of the City of Chicago, certain warehousemen holding state licenses and respondents, all of whom hold federal grain warehouse licenses

issued pursuant to the terms of the United States Warehouse Act. (7 U. S. C. Sec. 241, *et seq.*)

Respondents have been conducting their respective warehouse businesses in the Chicago area under the sole authority of such federal licenses for many years. (R. 60-75.)

The Rice complaint charged in paragraph 13 thereof (R. 21-22) that all or some of the respondents had violated the laws of the State of Illinois in the following particulars: Charging unjust, unreasonable and discriminatory rates, pursuing discriminatory practices, operating without a State license, failing to secure Commission approval of contracts and security issues, mixing public grain with grain of different grades, failing to file, print and publish schedules of rates and charges and abandoning service without Commission approval.

The United States Warehouse Act provides for the regulation of warehouses securing a federal license under the Act. Broad regulatory powers over such warehouses are conferred upon the Secretary of Agriculture. These powers expressly or by implication embrace all phases of regulation sought to be invoked under state authority by the Rice Complaint. Section 28 of said Act, (7 U. S. C.) Sec. 268 authorizes the Secretary of Agriculture "to make all rules and regulations as he may deem necessary for the efficient execution of the provisions of the Act". Detailed regulations have been adopted pursuant to this statutory authority. They are set forth in 7 Code of Federal Regulations, Sec. 102, *et seq.*

Respondents moved to dismiss the Rice proceedings on the ground that the United States Warehouse Act had preempted and occupied the field of regulation of federally licensed warehouses and had superseded any authority of the Commission with respect to the matters involved in the Rice complaint. (R. 25-26.)

The Commission denied respondents' motion and set the cause for hearing on October 24, 1944. (R. 27.)

On October 20, 1944, respondents filed their verified complaint for injunctive relief in the United States District Court against the Rice defendants, the Illinois Commerce Commission, its Chairman and members and the Attorney General of Illinois. (R. 2-28.)

Petitioners filed motions and an answer in the nature of a demurrer to respondents' verified complaint. (R. 36-48.)

The District Court entered an order denying all injunctive relief sought by respondents and dismissed their case. (R. 91-93.) Appeals were taken by respondents to the Circuit Court of Appeals for the Seventh Circuit. On June 7, 1946, that Court entered an order reversing the District Court with directions to overrule petitioners' motion to strike and to proceed in accordance with the views expressed in the opinion of the Circuit Court of Appeals, (R. 126) to the effect that exercise of jurisdiction by the Commission over the matters before it "plainly and palpably infringes," the policy of Congress or presents an "obstacle to the accomplishment and execution of the full purposes and objectives of Congress." (R. 113.)

IV.

ARGUMENT.

A.

The Decision of the Circuit Court of Appeals Sustaining the Equitable Jurisdiction of the District Court Was Correct, and Not in Contravention of the Johnson Act.

Although the Rice petitioners (Case No. 470), have not made any contentions in their petition with regard to the jurisdiction of the District Court, the Attorney General in the petition of the Illinois Commerce Commission, *et al.*, (Case No. 472) persists in urging two of the several objections made by him in the Circuit Court of Appeals to the jurisdiction of the District Court.

His principal contention on this point now is that under the provisions of the Johnson Act Amendment to the Judicial Code, 28 U. S. C., § 41(1), the District Court should not have entertained the complaint in the instant case. Inasmuch as that Act deprives the District Court of jurisdiction to enjoin the enforcement of the orders of state administrative bodies *only* in cases where jurisdiction is based "solely upon the ground of diversity of citizenship or the repugnance of such order to the Constitution of the United States", it is clearly inapplicable to the instant case. The complaint, as demonstrated by the opinion of the Circuit Court of Appeals (156 F. (2d) 36; R. 111) is not based on either of these grounds; it is solely predicated on the theory that the federal statutes involved have superseded the Illinois laws sought to be enforced, and jurisdiction is invoked because the laws of the United States are involved

(Para. I, Complaint, Rec. 4). The Attorney General's argument on this point is accordingly without merit.

His other argument to the effect that the District Court should not have exercised equitable jurisdiction in this case can be summarily disposed of by a reference to decisions of this court which recognize the propriety of the granting of equitable relief by federal courts in cases of this kind. *Public Utilities Commission of Ohio, et al.* v. *United States Fuel Gas Co.*, 317 U. S. 456 (1943); *Cloverleaf Butter Co.* v. *Patterson*, 315 U. S. 148 (1942); *A. F. of L.* v. *Watson*, ... U. S. ....., 66 S. Ct. 761 (1946); Cf. *Tully* v. *Interstate Natural Gas Co., Inc.*, 82 F. 2d 145 (C. C. A. 5, 1936).

B.

The Circuit Court of Appeals Properly Construed the United States Warehouse Act in Accordance With the Clear Provisions of the 1931 Amendments Thereto, and the Interpretation Thereof in Cloverleaf Butter Co. v. Patterson, 315 U. S. 148.

Consideration of the United States Warehouse Act and its legislative history discloses that Congress intended to preempt the field so as to preclude the state regulation of federally licensed warehouses sought to be invoked by petitioners.

The Act (set forth in Appendix A, Rice Petition, Case No. 470) is broad in its scope, and embraces, among others, the following subjects: licensing (Secs. 4, 5, 9); rates and charges (Sec. 25); revocation of license for unreasonable charges or violation of any terms of the Act (Sec. 25); requirement of a bond for faithful performance of obligations under the Act (Sec. 7); license and inspection fees; discrimination (Sec. 13); approval of certain mingling of grain (Sec. 16); form and contents of warehouse receipts

(Sec. 18); records and reports (Sec. 23); examination of stored products (Sec. 24); publication of investigations (Sec. 26); examination of books and records (Sec. 27). It further grants the Secretary of Agriculture exclusive power over federal licensees (Sec. 29), and the power to make rules and regulations for the efficient execution of provisions of the Act (Sec. 28).

Thus, the Act together with the detailed regulations, promulgated under the authority of the Act (7 Code of Federal Regulations, Section 102, *et seq.*) constitute a broad and well-rounded system of regulation and shows the definite purpose and design of Congress to preempt the field of regulation involved here with respect to warehousemen licensed under that Act.

The language used in Section 29 and the legislative history of that Section, afford conclusive evidence that Congress intended to preempt the field here in controversy. Prior to its amendment in 1931, Section 29 read as follows:

> "Nothing in this chapter shall be construed to conflict or to authorize any conflict with or in any way to impair or limit the effect or operation of the laws of any state relating to warehouses, warehousemen, weighers, graders, inspectors, samplers, or classifiers; but the Secretary of Agriculture is authorized to cooperate with such officials as are charged with the enforcement of such state laws in such States and through such cooperation to secure the enforcement of the provisions of this chapter. * * *" (7 U.S.C. § 269.)

In *Independent Gin & Warehouse Co.* v. *Dunwoody*, 44 F. 2d 1 (C.C.A. 5th, 1930), cotton warehousemen licensed under the United States Warehouse Act sought to enjoin the enforcement of the Alabama law providing for licensing and regulating such warehousemen, alleging that enforcement of such provisions would be a burden on inter-

state commerce. The court denied the injunction, holding that Section 29 of the Act as then in force did not indicate any intention of Congress to exclude state regulation of such warehousemen. Section 29 of the United State Warehouse Act (7 U.S.C. § 269) was subsequently amended in 1931 to read as follows:

> "In the discretion of the Secretary of Agriculture he is authorized to cooperate with State officials charged with the enforcement of State laws relating to warehousemen, weighers, graders, inspectors, samplers or classifiers; *but the power, jurisdiction and authority conferred upon the Secretary of Agriculture under this chapter shall be exclusive* with respect to all persons securing a license hereunder so long as said license remains in effect. * * *" (Emphasis supplied.)

This amendment clearly indicates the intention of Congress to vest jurisdiction of federally licensed warehouses in the Secretary of Agriculture to the exclusion of the state authorities, and having been adopted in the wake of the *Dunwoody* case, *supra*, it is clear that it was designed to obviate the effect of that case, and to thereby avoid confusion and inconsistencies which would be inevitable under the resulting "dual system of futile duplication of two authorities over the same subject matter." See, *First Iowa Hydro-Electric Corporation* v. *Federal Power Commission*, ___ U. S. ___, 66 S. Ct. 906 (1946), involving a similar question under the Federal Power Act. That this was the purpose of Congress in adopting the 1931 amendments, is shown by the Reports of the House and Senate Committees with reference thereto.

In the House Committee report (H. Rept. 4, 71st Cong., 1st Sess., p. 4) it is stated:

> "Under Section 29 (Section 269 of the United States Code) of the law as at present, if the Federal Act in any way conflicts with the State law, the Fed-

eral law becomes subservient to the State law in so far as there is a conflict. The result is that the Federal law can be negatived by State legislation. * * * To make the law accomplish the real purpose of Congress, it should be independent of any State legislation on the subject. The amendments proposed to section 29 of this bill aim to make the Federal warehouse act stand on its own bottom."

The following appears in the Senate Committee report (S. Rept., 1775, 71st Cong., 3rd Sess., p. 2):

"Section 29 of the act now provides 'That nothing in this act shall be construed to conflict with, or to authorize any conflict with, or in any way to impair or limit the effect or operation of the laws of any state relating to warehouses, warehousemen,' etc. The effect of this wording is to make the Federal act subservient to state acts wherever there is a conflict. As might be expected there are conflicts between State laws and the federal act. Since the law specifically makes the federal act subservient to State laws in case of conflict, this feature militates against the full value of federal warehouse receipts for collateral purposes. The amendment proposed to this section would make the federal act independent of State laws. In other words, it would place the federal act on its own bottom. It does not change the permissive feature of the federal act. No warehouseman is obliged to operate under the federal act. The amendment merely leaves the choice to warehousemen and their patrons as to whether or not a warehouse shall be operated under the federal act, and *if it is decided to secure a license under the federal act then the warehouseman would be authorized to operate without regard to state acts and be solely responsible to the federal act.* Bankers have repeatedly pointed out that this section of the warehouse act is its weakest feature. This amendment will clarify and remove many uncertainties from the credit man's viewpoint. As the law now reads, for fear the federal act may be negatived by state legislation or regulation, a banker

is obliged to follow closely the laws of the 48 different states, the regulations thereunder, and the administrative rulings thereunder. This is an impossible task. *The suggested amendment will place the federal act independent of State acts* and should enhance the value of receipts for collateral purposes. Again, this amendment is in harmony with the policy laid down in the national banking act. In other words, it leaves it with the warehousemen to decide whether they wish to operate under the state or federal law and having made their choice they shall then be permitted to operate without interference on the part of any agency." (Emphasis supplied.)

This intention of Congress is also demonstrated by the amendment to Section 6 of the United States Warehouse Act (7 U.S.C. § 247), which accompanied the amendment of Section 29.

Prior to its amendment, Section 6 required, as a condition to securing a federal license, that each licensee give a bond "to secure the faithful performance of his obligations as a warehouseman *under the laws of the State, district or territory* in which he is conducting such warehouse, as well as under the terms of this Act, and the rules and regulations prescribed hereunder * * *." The amendment, however, eliminated the requirement that the bond be conditioned upon *compliance with the laws of the State, district or territory in which the warehouse was conducting business*, and provided merely that the requirement that the bond be conditioned upon compliance with the federal Act and federal regulations thereunder. That this change to Section 6 was also in furtherance of the new concept of Section 29 is borne out by the statement in the Senate Committee Report 1775, 71st Congress, Third Session, Page 2, "again this amendment to Section 6 naturally follows the amendment suggested to Section 29."

The removal by the amendment to Section 6, of the

necessity of compliance with state law was consistent only with the purpose and design of Congress to give effect to the amendment to Section 29, under which exclusive control over federally licensed warehousemen was vested in the federal government.

Pursuing this clear-cut policy of divesting state authorities of control over federal warehouses, Congress in 1936 provided in Section 5a of the Commodity Exchange Act that contract markets, such as the Chicago Board of Trade, shall require that receipts issued under the United States Warehouse Act

> "* * * be accepted in satisfaction of any futures contract, made on or subject to the rules of such contract market, without discrimination and *notwithstanding that the warehouseman issuing such receipts is not also licensed as a warehouseman under the laws of any State or enjoys other or different privileges than under State law.*" (Emphasis supplied.) (7 U. S. C. § 7a(7).)

That the 1931 amendments had the effect of foreclosing state action in the instant case was clearly recognized in *Cloverleaf Butter Co.* v. *Patterson*, 315 U. S. 148 (1942). The court in footnote 5 (p. 155) cited *Merchants Exchange* v. *Missouri*, 248 U. S. 65, as an example of an instance where the state was free to legislate upon matters not preempted by the federal government. This case dealt with section 29 of the United States Warehouse Act as it read prior to the 1931 amendment. The court then, in footnote 6 (p. 156) of the *Cloverleaf* case, cited Section 29 as amended in 1931 as an illustration of the exercise by Congress of its power so as to supersede state regulation, and make federal regulation exclusive. As stated by the Circuit Court of Appeals, 156 F. (2d) 33 at p. 39 (R. 115-6) in this connection:

> "Thus we have the court in the same opinion treating Section 29 before it was amended as an illustration

> of dual authority, and Section 29 after it was amended as providing for sole authority of the federal government."

This construction of the 1931 amendment to the United States Warehouse Act was also adopted by the Supreme Court of South Dakota in 1943, in *In re Farmers Cooperative Association*, ... S. D. ....., 8 N. W. (2d) 557 (1943). In that case, the court held that the South Dakota statute (comparable to Illinois laws sought to be enforced here) was in conflict with the United States Warehouse Act, and because of the 1931 amendment to that act federally licensed warehousemen were not subject to State Regulation. The assertion (Rice Petition p. 7) that "This is a case of first impression" is, therefore, incorrect.

Petitioners would have the court believe that the decision of the Circuit Court of Appeals will render ineffective state regulation of warehouses under the state laws. However, as was clearly pointed out in the opinion below (156 F. 2d, at p. 40, R. 117), state regulation is left unimpaired as to warehouses not licensed under federal law, and "no vacuum is created". Petitioners Rice, *et al.* further assert in their brief (p. 10) that "no such federal regulation and control has been exercised in the thirty years that the federal statute has been in effect." This statement is altogether without basis, and is contrary to the record (R. 65, 67, 72, 75). As stated in the opinion below (156 F. (2d), p. 36, R. 110):

> "* * * each of the plaintiffs has filed with the secretary schedules of rates and charges for the storage and handling of grain, and that each is regularly inspected and examined by representatives of the United States Department of Agriculture."

Such a statement also entirely overlooks the fact that the Secretary of Agriculture pursuant to Sec. 28 of the Act

has adopted comprehensive regulations governing the operation of federally licensed warehouses. (7 Code of Federal Regulations, Section 102 *et seq.*)

The decision of the Circuit Court of Appeals in this case will not have the dire consequences conjured by petitioners. On the contrary any other conclusion would result in conflicts, between federal and state authority, and confusion and embarrassment inherent in dual regulation, and defeat the clearly expressed intention of Congress that only one authority should control and regulate federally licensed warehouses.

In this connection see *First Iowa-Hydro-Electric Cooperative* v. *Federal Power Commission*, ... U. S. ....., 66 S. Ct. 906, *supra*, where, in holding that an applicant need not first obtain a permit under state law as a condition precedent to the issuance of a federal license for the same project under the Federal Power Act, this court stated that to impose such requirement would vest in state authorities "a veto power over the federal project", and that

> "Such a veto power easily could destroy the effectiveness of the federal act. It would subordinate to the control of the State the 'comprehensive' planning which the Act provides shall depend upon the judgment of the Federal Power Commission or other representatives of the Federal Government."

Conclusion.

In view of the clear provisions of the United States Warehouse Act as amended and the manifest intention of Congress demonstrated in the 1931 amendments thereto, as recognized by this court in *Cloverleaf Butter Co.* v. *Patterson*, 315 U. S. 148, it is submitted that no grounds ap-

pear for allowing the Writs of Certiorari in the instant cases.

Chicago, Illinois,
Sept. 26, 1946.

Respectfully submitted,

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